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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,353	03/23/2006	Daniel Alvarez JR.	31941019009	5574

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EXAMINER

VANOF, TIMOTHY C

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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10/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,353

Applicant(s)

ALVAREZ ET AL.

Examiner

TIMOTHY C. VAN DYKE

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20, 21 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-19 and 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date Aug. 21, 2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-19, 22, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2001/0012502 A1 to Okumura et al.

Paragraph no. 0119 in the Okumura et al. reference describes a complex oxide containing at least one element selected from the group consisting of cerium, lanthanum, yttrium, neodymium and praseodymium and also at least one element selected from the group consisting of titanium, manganese, iron, cobalt, nickel, copper and tin. The weight ratio of the lanthanide element to the other (non-lanthanide) transition metal ranges from 1:20 to 100:1. *There is significant overlap between the members of the Applicants' Markush group and the members of the Markush group of the Okumura et al. reference.*

Allowable Subject Matter

Applicants' claims 20 and 21 have not been rejected under either 35USC102 or 35USC103 because claim 20 is limited to composition comprising 3 to 20 % by weight of a metal oxide from the lanthanide serie, and this weight percentage is

not taught or suggested in the Okumura et al. reference. Applicants' claim 25 has not been rejected under either 35USC102 or 35USC103 because the claim is limited to the combination of lanthanum oxide or cerium oxide as well as zirconium or an oxide thereof, and this particular combination is not taught or suggested in the Okumura et al. reference.

Response to Arguments

Applicants' arguments submitted with their Amendment filed on Aug. 21, 2008 with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The Applicants have amended their claim 1 to recite significant overlap between the Markush group of Applicants' claim 1 and the Markush group of U. S. 2001/0012502 A1 to Okumura et al., and the Applicants did not further limit the lanthanide metal or oxide to be present in an amount ranging from 3 to 20 percent by weight in their claim 1. The Applicants have introduced a new claim 24, but there is nothing in this claim to distinguish it from the Okumura et al. reference - hence, the finality of this Office Action is deemed proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY C. VANOY whose telephone number is (571)272-8158. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Timothy C Vanoy
Primary Examiner
Art Unit 1793

tcv

/Timothy C Vanoy/
Primary Examiner, Art Unit 1793

Application Number**Application/Control No.**

10/565,353

Examiner

TIMOTHY C. VANOY

**Applicant(s)/Patent under
Reexamination**

ALVAREZ ET AL.

Art Unit

1793